IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1225 OF 2007
IN
SUIT NO.2014 OF 1980

WITH

CHAMBER SUMMONS NO.873 OF 2007
IN
NOTICE OF MOTION NO.1225 OF 2007
IN
SUIT NO.2014 OF 1980

Akhil Bharat Varsha Marwari
Agarwal Jatiya Kosh & Ors. ..Plaintiffs.

V/s.

Seksaria Sugar Mills Ltd. now known as
Balrampur Chini Mills Ltd. & Ors. ..Defendants.

Mr.D.V.Merchant, Sr.Advocate i/b. Ruchir Tolat i/b. M/s. L.C.Tolat & Co. for plaintiff.

Ms.Sheetal S. Shah i/b. Mehta & Girdharilal for defendant Nos. 1 and 2.

Mr.Sakhare, Sr.Counsel with Mr.R.Y.Sirsikar, Mr.H.C.Pimple for BMC.

Mr.Janak Dwarkadwas, Sr.Advocate a/w Mr.Parimal K. Shroff a/w with Mr.Manoj Mhambrey i/b. Manoj Mhambrey for defendant No.5.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 19, 2007.

P.C. :

1. In terms of the order dated 8th June, 2007, the plaintiffs have served Mumbai Municipal Corporation. Mr.Sakhare instructed by Mr.Pandhare,

Sub Engineer(Development Planning) P/South Ward has appeared on behalf of the Corporation. With regard to the specific question put to the Corporation as to whether formal possession of the suit property has been taken over by the Corporation, Mr.Sakhare for the Corporation on instructions states that although certain formalities have been completed, formal possession of the suit property has still not been taken over. If it is so, apprehension of the plaintiff founded on the factum of Corporation having taken possession does not survive.

2. Counsel for the plaintiffs states that in that case, no other issue needs to be examined in the present Motion. Counsel for the plaintiffs also concedes that the plaintiffs have registered lis pendens in respect of suit property. If it is so, any transaction in respect of the suit property during the pendency of the suit, in law, will be subject to the outcome of the suit. Counsel for the defendant No.5 points out that there is some dispute about the correctness of the claim of the plaintiffs about registration of lis pendens in respect of the suit property. The above position is recorded without prejudice to the rights and contentions of the rival parties.

3. In view of the aforesaid reasons, Motion as well as cognate Chamber Summons No.873 of 2007 stand disposed of.